

On November 16, 2018 this Court, consisting of the Honorable Michael Sherlock, the Honorable W.G. Edmanson II, and the Honorable Alexander J. Montano acting as a special court pursuant to 25 *Del C.* § 5717 (a)¹ convened a trial *de novo*² in reference to a Landlord/Tenant Summary Possession petition filed by Kellie Kulick (“Plaintiff”), against John Carter (“Defendant”). At the conclusion of trial, the Court reserved its decision.

BACKGROUND

Plaintiff filed a Landlord/Tenant Summary Possession petition on September 25, 2018 seeking unpaid rent, post judgment interest, and possession of the rental unit located at 1915 Mitten Street, Dover, Delaware. Trial was held on October 15, 2018 and a judgment was entered in favor of the Defendant.³ The Plaintiff filed a timely appeal on October 22, 2018 and a trial *de novo* was held on November 16, 2018.

PRETRIAL

At Pretrial, the Court determined that Mickie Clark and Crystal Sinegar should not be named parties in this case, and were removed.

TESTIMONY OF PARTIES & WITNESSES

The Plaintiff called the Defendant as her first witness. The Defendant acknowledged the lease⁴ dated July 31st 2017 and agreed that the rent was for \$900.00 monthly. Defendant additionally acknowledged that the lease ended August 1, 2018, there was no new lease, and that he had not paid rent for the months of August, September, October, and November through the date of trial. Additionally, the Defendant added that he moved out

¹ 25 *Del C.* § 5717 (a). *Nonjury trials.* With regards to nonjury trials, a party aggrieved by the judgment rendered in such proceeding may request in writing, within 5 days after judgment, a trial *de novo* before a special court comprised of 3 justices of the peace other than the justice of the peace who presided at the trial, as appointed by the chief magistrate or a designee, which shall render final judgment, by majority vote.

² *De Novo* trial. Trying a matter anew; the same as if it had not been heard before and as if no decision had been previously rendered. *Black’s Law Dictionary* 300 (6th ed. 1991).

³ *Kulick v. Carter*, Del. J.P., C.A. No. JP16-18-006604, Wilson, J. (Oct. 15, 2018).

⁴ Pl. E. #1: Owners Agreement / Lease

about two weeks ago but did not know an exact date, and that he would fix a window in the basement, and a window in the back door.

Mickey Clark the Plaintiff's second witness testified he was helping the Plaintiff with the property. He testified that no rent was received by the Defendant for August, September, October, and November.

The Plaintiff rested her case.

The Defendant called himself as his first witness. The Defendant testified that he signed a lease with the Plaintiff, and that the lease ended on August 1, 2018. The defendant also stated that because there was no new agreement, that was why he stopped paying rent. Additionally, the defendant acknowledged that he has not paid rent for the months of August, September, October, and November.

DISCUSSION

Through the testimony of both parties, it is undisputed that a landlord/tenant relationship exists between the parties. It is also undisputed, through the Defendant's own admission, that the Defendant has not made his rent payments from August 2018 through November 16th the date of trial. The rent was established for 900.00 monthly with no other lease being signed at the expiration of the initial lease. Because the undisputed testimony is that the lease ended on August 1st, 2018. The court recognizes the parties have entered into a month to month lease⁵. However, with regard to possession, the court finds that the Plaintiff failed to properly notify the Defendant of any opportunities to cure, to pursue

⁵ 25 Del C. § 5106 (b). Where no term is expressly provided, a rental agreement for premises shall be deemed and construed to be for a month-to-month term.

summary possession or even notice to terminate. The Plaintiff did not present a 5 day letter⁶, proof of mailing⁷, or a 60 day letter to terminate the lease⁸.

CONCLUSION

After considering the evidence and testimony presented, the Court finds the Plaintiff has proven their case by a preponderance of the evidence in part. Plaintiff did not provide a 5 day letter, 60 day notice, and proof of mailing. The court issues a unanimous decision in favor of the Plaintiff as follows:

Judgment in the Amount of \$3,100.00 For August, September, October and November rent through the trial date of November 16, 2018.

Plus, per diem at \$30.00 a day until possession is officially surrendered to the Plaintiff.

Post Judgment Interest @ 7.75%.

Possession remains with the Defendant.

⁶ 25 Del C. § 5502 (a). Landlord remedies for failure to pay rent.

(a) A landlord or the landlord's agent may, any time after rent is due, including the time period between the date the rent is due and the date under this Code when late fees may be imposed, demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in such notice, to be not less than 5 days after the date notice was given or sent, the rental agreement shall be terminated. If the tenant remains in default, the landlord may thereafter bring an action for summary possession of the dwelling unit or any other proper proceeding, action or suit for possession.

⁷ 25 Del C. § 5113 (b) In lieu of personal service or service by copy of the notice or process required by this Code, a copy of such notice or process may be sent by registered or certified mail or first-class mail as evidenced by a certificate of mailing postage-prepaid, addressed to the tenant at the leased premises, or to the landlord at the landlord's business address as set forth in the lease or as otherwise provided by landlord, or if the landlord is an artificial entity, pursuant to Supreme Court Rule 57, at its office or place of business. The return receipt of the notice, whether signed, refused or unclaimed, sent by registered or certified mail, or the certificate of mailing if sent by first-class mail, shall be held and considered to be prima facie evidence of the service of the notice or process

⁸ 25 Del C. § 5107 Renewals of rental agreements with modifications.

(a) If the landlord intends to renew the rental agreement subject to amended or modified provisions, the landlord shall give the tenant a minimum of 60 days' written notice prior to the expiration of the rental agreement that the agreement shall be renewed subject to amended or modified provisions, including, but not limited to, amended provisions relating to the length of term or the amount of security deposit or rent. Such notice shall specify the modified or amended provisions, the amount of any rent or security deposit and the date on which any modifications or amendments shall take effect.

IT IS SO ORDERED this 13th day of December, 2018.

/s/ W. G. Edmanson (SEAL)

W.G. Edmanson II
Justice of the Peace
FOR THE COURT